IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 1368 of 2005
With
CIVIL APPLICATION No. 8389 of 2005
In
FIRST APPEAL No. 1368 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG
HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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CHAM ICE & COLD STORAGE & 5 - Appellant(s)

Versus

TRIDENT INDIA LTD. - Defendant(s)

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Appearance :
MR MIHIR THAKOR, SR.ADVOCATE with MR PP BANAJI for Appellant(s) : 1 - 6.
MR DV PARIKH for Respondent
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CORAM : HONOURABLE MR.JUSTICE R.S.GARG
and
HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 24/10/2005

COMMON ORAL JUDGMENT

(Per : HONOURABLE MR.JUSTICE R.S.GARG)

1. Though the matter is listed for consideration of Civil Application No.8389 of 2005, the parties submit that in terms of their consent, the First Appeal may be finally disposed of. The appeal is admitted for final hearing. Mr.D.V. Parikh waives service of process of admission on behalf of the respondent.

2. Learned counsel for the appellant submits that in accordance with the earlier directions of this Court contained in order dated 8.7.2005, the appellants have deposited a sum of Rs. 2.00 crores with the trial court.

3. Learned counsel for the respondent-decree holder submits that in view of the deposits made by the appellant, the judgment and decree passed by the court below may be set aside and the matter may be remitted to the trial court for its disposal in accordance with law. He, however, submits that the amount already deposited with the trial court be allowed to be withdrawn by the respondent in view of certain admissions made by the appellants in their letter dated 9.4.2002, wherein one Mr. Dipak Gupta, a person from Accounts Department, had made clear admission that the dues, according to the appellants' books, were Rs. 1,89,83,656/- and not as

shown in the accounts books of the respondent. Learned counsel for the appellants, taking a serious objection to this submission says that the statement made by Mr. Dipak Gupta would not be binding upon the appellant, because, he is not a person who can make such statement.

4. Without entering into the controversy, we dispose of the appeal and issue further direction that the amount of Rs. 2.00 crores deposited by the appellants may be withdrawn by the respondents on their furnishing bank guarantee in the sum of Rs. 2.00 crores of any scheduled bank, to the satisfaction of the trial court. Once the bank guarantee is submitted to the satisfaction of the trial court, then, for all purposes, that would be taken to be the first charge in case the amount is required to be refunded.

5. It is made clear that in case the appellants are not found liable to any money or their liability is found lesser than Rs. 2.00 crores, then, the trial court shall direct restitution of the balance amount in favour of the appellants with interest as deemed fit in the discretion of the court below.

6. The trial court is hereby directed to dispose of the suit within one year from the date of submission/receipt of copy of this order. The parties shall appear before the trial court on 14.11.2005. It is expected of the parties that after obtaining this consent order, they shall cooperate in final disposal of the matter. Consequently Civil Application stands disposed of.

[R.S. GARG, J.]

[K.M. MEHTA, J.]

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